

CCRB INVESTIGATIVE RECOMMENDATION

| | | | | | |
|---|--|---------------------------|--|---|---------------------------------|
| Investigator: Benjamin Wurtzel | Team: Squad #2 | CCRB Case #: 201601395 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Saturday, 02/20/2016 3:40 AM | Location of Incident: In front of 1353 Edward L. Grant Highway and the 44th Precinct stationhouse | Precinct: 44 | 18 Mo. SOL 8/20/2017 | EO SOL 8/20/2017 | |
| Date/Time CV Reported Mon, 02/22/2016 12:29 PM | CV Reported At: CCRB | How CV Reported: Phone | Date/Time Received at CCRB Mon, 02/22/2016 12:29 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |

| Witness(es) | Home Address |
|-------------|--------------|
| | |

| Subject Officer(s) | Shield | TaxID | Command |
|--------------------------|--------|--------|---------|
| 1. DTS Brian Mcivor | 00574 | 899570 | 044 PCT |
| 2. POF Laura Cadavid | 26144 | 948730 | 044 PCT |
| 3. SGT Dunia Palacios | 05307 | 940543 | 044 PCT |
| 4. POM Michael Espenberg | 03086 | 948938 | 044 PCT |
| 5. An officer | | | |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|---------------------|-----------|--------|----------|
| 1. POM Thomas Ohare | 30812 | 919498 | 044 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|-------------------------|---|-----------------------------|
| A.POF Laura Cadavid | Abuse: In front of 1353 Edward L. Grant Highway in the Bronx, Police Officer Laura Cadavid threatened to arrest § 87(2)(b) | |
| B.POF Laura Cadavid | Abuse: In front of 1353 Edward L. Grant Highway in the Bronx, Police Officer Laura Cadavid searched § 87(2)(b) | |
| C.POM Michael Espenberg | Force: In front of 1353 Edward L. Grant Highway in the Bronx, Police Officer Michael Espenberg used physical force against § 87(2)(b) | |
| D.POM Michael Espenberg | Abuse: In front of 1353 Edward L. Grant Highway in the Bronx, Police Officer Michael Espenberg interfered with a video recording. | |
| E.POF Laura Cadavid | Discourtesy: In front of 1353 Edward L. Grant Highway in the Bronx, Police Officer Laura Cadavid spoke discourteously to § 87(2)(b) | |
| F. An officer | Discourtesy: At the 44th Precinct stationhouse, an officer spoke discourteously to § 87(2)(b) | |
| G.SGT Dunia Palacios | Abuse: At the 44th Precinct stationhouse, Sergeant Dunia Palacios threatened to arrest § 87(2)(b) | |
| H.DTS Brian Mcivor | Force: At the 44th Precinct stationhouse, Detective Brian McIvor used physical force against § 87(2)(b) | |
| I.DTS Brian Mcivor | Discourtesy: At the 44th Precinct stationhouse, Detective Brian McIvor spoke discourteously to § 87(2)(b) | |

| Officer(s) | Allegation | Investigator Recommendation |
|--------------------|---|-----------------------------|
| J.DTS Brian Mcivor | Abuse: At the 44th Precinct stationhouse, Detective Brian McIvor threatened § 87(2)(b) with the use of force. | |

Case Summary

On February 20, 2016, at 3:40 a.m., § 87(2)(b) was at the bar of the Budda Lounge and Restaurant at 1353 Edward L. Grant Highway in the Bronx when he was approached by a bouncer, § 87(2)(b) who ordered him out of the restaurant for an unpaid bar bill. § 87(2)(b) objected to the amount of the bill and was forcibly removed by § 87(2)(b). Once outside, § 87(2)(b) flagged down Police Officer Laura Cadavid and Police Officer Michael Espenberg of the 44th Precinct. Police Officer Cadavid informed § 87(2)(b) that he would go to jail if he did not pay his bar tab (**Allegation A**). Police Officer Cadavid then allegedly reached into § 87(2)(b)'s pocket and removed a wad of cash totaling \$550 (**Allegation B**). Police Officer Cadavid allegedly removed \$150 and handed it to § 87(2)(b). The remaining money was not returned to § 87(2)(b). § 87(2)(b) turned towards Police Officer Cadavid to inquire about his money and Police Officer Espenberg allegedly punched him with a closed fist on the right side of his face (**Allegation C**).

§ 87(2)(b) removed his mobile phone and began recording Police Officer Espenberg who allegedly slapped the phone out of his hand and onto the ground (**within Allegation C**). Police Officer Espenberg picked up the phone and allegedly deleted the video before returning the phone to § 87(2)(b) (**Allegation D**). Police Officer Cadavid allegedly pushed § 87(2)(b) up against the adjacent wall and said, "You're fucking going to jail," (**Allegation E**). § 87(2)(b) was taken to the 44th Precinct stationhouse where he was held for one hour before being released with a disorderly conduct summons. § 87(2)(b) was inquiring about his money as he left the stationhouse and an unidentified officer allegedly said, "Shut the fuck up, you baldie," (**Allegation F**).

As § 87(2)(b) was leaving the stationhouse, he argued with Sgt. Dunia Palacios of the 44th Precinct regarding the money that had been taken from him and he was told to leave the stationhouse. Sgt. Palacios informed § 87(2)(b) that he could be arrested for trespassing if he did not leave (**Allegation G**). Detective Brian McIvor of the 44th Precinct followed § 87(2)(b) as he walked away from the stationhouse. § 87(2)(b) was filming his interaction with officers when Detective McIvor pushed the arm that was holding the mobile phone (**Allegation H**). § 87(2)(b) asked Detective McIvor why he pushed him and Detective McIvor replied, "Don't put anything in my fucking face or my fucking fist is going to go in yours," (**Allegations I and J**). Detective McIvor then allegedly punched § 87(2)(b) on the left side of his face with a closed fist (**within Allegation H**). § 87(2)(b) departed the location at this time. § 87(2)(b) provided video footage from his mobile phone depicting his interaction with officers at the stationhouse.



2016-05-19_9-49-43.mp4

Mediation, Civil and Criminal Histories

This case was not suitable for mediation. § 87(2)(b) stated that he intended to file a lawsuit in regards to this incident. A request for confirmation has been sent to the New York City Office of the Comptroller and will be added to the case file upon receipt (Board Review 01) [§ 87(2)(b)] [§§ 86(1) (2)&(4)] [§ 87(2)(g)]

§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (Board Review 03).
- Police Officer Cadavid has been a member of the NYPD for five years and has had eight prior CCRB allegations in four cases and no substantiated allegations. § 87(2)(g)
- Police Officer Espenberg has been a member of the NYPD for five years and has had seven prior CCRB allegations in six cases and one substantiated allegation. § 87(2)(g)
- In CCRB case number 201108251, Police Officer Espenberg unlawfully searched a vehicle and received instructions from the NYPD.
- Sergeant Palacios has been a member of the NYPD for ten years and has had 16 prior CCRB allegations in nine cases and no substantiated allegations. § 87(2)(g)
- Detective McIvor has been a member of the NYPD for 25 years and has had 24 prior CCRB allegations in 14 cases and two substantiated allegations. § 87(2)(g)
- In CCRB case number 200301969, Detective McIvor refused to provide his name and shield number and received Command Discipline A from the NYPD.
- In CCRB case number 200905114, Detective McIvor performed a discourteous action and received Command Discipline B from the NYPD.

Potential Issues

The investigation identified § 87(2)(b) as the security staff member at the Budda Restaurant and Lounge who forcibly removed § 87(2)(b) from the building. The investigation attempted to obtain a witness statement from § 87(2)(b) by delivering a subpoena to the restaurant's owner, § 87(2)(b). Despite confirmation that the subpoena was delivered to § 87(2)(b), § 87(2)(b) did not appear for his interview and additional contact information for him could not be obtained. Additionally, Budda Restaurant and Lounge employees stated that surveillance footage could not be provided as their cameras delete video footage after five days and the subpoena requesting this footage had been sent after the video was deleted.

Findings and Recommendations

Explanation of Subject Officer Identification

Police Officer Cadavid was described as a Hispanic female in her mid-twenties with long dark hair and a fit build, wearing a sweater with an NYPD logo. Additionally, Police Officer Cadavid issued § 87(2)(b) a summons. § 87(2)(b) provided video footage showing a female who he stated was Police Officer Cadavid. Police Officer Cadavid is a Hispanic female in her thirties who was dressed in plainclothes on the incident date. Police Officer Cadavid acknowledged interacting with § 87(2)(b) and was the only female officer who did so while at the Budda Lounge and Restaurant. § 87(2)(g)

The female in the video footage was ultimately identified by Police Officer Cadavid as Sergeant Palacios. Sergeant Palacios confirmed that she was the Hispanic officer in the video and

matched the physical and clothing description provided by § 87(2)(b) for Police Officer Cadavid.

§ 87(2)(g)

Police Officer Espenberg was described as white male in his mid-twenties, 5'5" tall, with blond hair and a stocky build and dressed in uniform. Police Officer Espenberg was dressed in plainclothes at the time of the incident but otherwise matched the provided description. Police Officer Cadavid identified Police Officer Espenberg as her partner and Police Officer Espenberg acknowledged interacting with § 87(2)(b) § 87(2)(g)

Detective McIvor was described as a white male in his early-forties with blond hair and wearing a uniform with a detective shield. Additionally, § 87(2)(b) provided video of his interaction with Detective McIvor. Detective McIvor is a white male in his mid-forties and holds the rank of Detective-Specialist. Additionally, Detective McIvor's name can clearly be read off of his badge in the provided video. § 87(2)(g)

§ 87(2)(b) stated that while he was being brought out of the stationhouse, a black officer with a bald head in his mid-thirties with a gold shield and chevron on the sleeve of a blue uniform said, "Shut the fuck up, you baldie," to him. § 87(2)(b) could not provide additional details and the Roll Call does not indicate that there were any sergeants working at the time of the incident matching this description. Additionally, none of the officers interviewed for this investigation could identify an officer or sergeant matching this description. § 87(2)(g)

Allegation Not Pleaded

Because IAB and OCDs spinoff were created in regards to § 87(2)(b)'s allegation of his money not being returned to him by Police Officer Cadavid, an allegation of property seizure is not pleaded.

Allegation A – Abuse of Authority: In front of 1353 Edward L. Grant Highway, Police Officer Laura Cadavid threatened to arrest § 87(2)(b)

Allegation G – Abuse of Authority: At the 44th Precinct stationhouse, Sergeant Dunia Palacios threatened to arrest § 87(2)(b)

It is undisputed that Police Officer Cadavid informed § 87(2)(b) that he could be arrested in front of the Budda Lounge and Restaurant if he did not pay his bar tab and that Sgt. Palacios later told § 87(2)(b) that he could be arrested in front of the 44th Precinct stationhouse for trespassing.

§ 87(2)(b) stated during his verified statement that he was threatened with arrest by Police Officer Cadavid for not paying his bar tab when she spoke with him outside of the Budda Lounge and Restaurant. While § 87(2)(b) insisted that he was not shown the bill, he conceded that he did refuse initial requests to pay his tab and further stated that his removal from the bar was related to a disputed charge on his bill that he had not paid. § 87(2)(b) stated that he was upset at the time of his discharge from the 44th Precinct stationhouse and remained on the premises to film himself asking officers about money that was not returned to him when he was discharged. § 87(2)(b) stated that an officer, identified as Sergeant Palacios, threatened to arrest him for trespassing.

§ 87(2)(g)

Police Officer Cadavid stated that she informed § 87(2)(b) that he would be arrested for petty larceny for not paying his bar tab. Sergeant Palacios confirmed that she informed § 87(2)(b) that he would be charged with trespassing for not leaving the premises of the 44th Precinct stationhouse. Sgt. Palacios stated that § 87(2)(b) refused to multiple requests to leave the premises.

§ 87(2)(b) provided video of himself being removed from the stationhouse, showing Sgt. Palacios telling § 87(2)(b) that he was being discharged from police custody and would be arrested for trespassing if he did not leave the premises. The video indicates that § 87(2)(b) was instructed to leave numerous times before he was threatened with arrest (Board Review 08).

New York Penal Law Section 155.25 states that a person is guilty of petite larceny when they steal property (Board Review 09). New York Penal Law Section 140.05 states that a person is guilty of trespass when they knowingly enter or remain unlawfully upon a premises (Board Review 10).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation B – Abuse of Authority: In front of 1353 Edward L. Grant Highway, Police Officer Laura Cadavid searched § 87(2)(b)

Allegation C – Force: In front of 1353 Edward L. Grant Highway, Police Officer Michael Espenberg used physical force against § 87(2)(b)

Allegation D – Abuse of Authority: In front of 1353 Edward L. Grant Highway, Police Officer Michael Espenberg interfered with a video recording.

Allegation E – Discourtesy: In front of 1353 Edward L. Grant Highway, Police Officer Laura Cadavid spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that Police Officer Cadavid reached into his pants pocket while he was restrained and removed a wad of cash which she used to pay the bar for § 87(2)(b)'s outstanding bill. § 87(2)(b) further stated that Police Officer Espenberg punched him in the face shortly after Police Officer Cadavid returned. § 87(2)(b) further stated that he attempted to film the officers after he was released and that Police Officer Espenberg knocked his phone to the ground and deleted his video before handing the phone back to him. § 87(2)(b) stated that Police Officer Cadavid said, "You're fucking going to jail," as she placed him in handcuffs.

Police Officer Cadavid denied the above allegations. Police Officer Cadavid stated that § 87(2)(b) removed money from his pocket on his own volition and handed her the specific amount that he owed the bar, after being shown the bill. Police Officer Cadavid further denied seeing Police Officer Espenberg strike § 87(2)(b) in any way or handle his phone. Police Officer Cadavid denied using any profanity during this incident.

Police Officer Espenberg denied the above allegations and corroborated Police Officer Cadavid's account of § 87(2)(b) removing his money from his own pocket. Police Officer Espenberg stated that § 87(2)(b) approached bar staff and paid them himself. Police Officer Espenberg stated that he did not strike § 87(2)(b) or otherwise touch him for any purpose aside from placing him in handcuffs. Police Officer Espenberg had no recollection of handling § 87(2)(b)'s mobile phone during the incident and did not know what happened to it when he was placed under arrest. Police Officer Espenberg denied hearing Police Officer Cadavid use any

profanity during this incident.

§ 87(2)(g)

Allegation F – Discourtesy: At the 44th Precinct stationhouse, an officer spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that an officer said, “Shut the fuck up, you baldie,” to him as he was leaving the 44th Precinct stationhouse. § 87(2)(g)

Allegation H – Force: At the 44th Precinct stationhouse, Detective Brian McIvor used physical force against § 87(2)(b)

Allegation I – Discourtesy: At the 44th Precinct stationhouse, Detective Brian McIvor spoke discourteously to § 87(2)(b)

Allegation J – Abuse of Authority: At the 44th Precinct stationhouse, Detective Brian McIvor threatened § 87(2)(b) with the use of force.

§ 87(2)(b) alleged that Detective McIvor pushed his arm while he was attempting to film officers outside of the 44th Precinct stationhouse and that Detective McIvor said, “Get your fucking phone out of my face before my fist goes in your face.” § 87(2)(b) stated that Detective McIvor then struck him with a closed fist on the right side of his face.

Detective McIvor stated that he attempted to approach § 87(2)(b) and ask him to leave the area in a calm manner. Detective McIvor further stated that § 87(2)(b) turned towards him and raised a hand that was holding a phone towards his face. Detective McIvor stated that he did not know whether § 87(2)(b) was deliberately attempting to strike him or was caught unaware by him but that he pushed him away out of concern for his own safety and said, “Don’t put that fucking thing in my face.” Detective McIvor stated that he pushed § 87(2)(b) away by placing two hands on his chest and pushing him backwards. Detective McIvor further stated that he told § 87(2)(b) that he would punch him in the mouth if he put his phone in his face.

Video of the incident indicates that Detective McIvor approached § 87(2)(b) who is facing him and aware of his presence. § 87(2)(b) signals that he is aware of Detective McIvor approaching him by saying, “Wait, wait, wait. What is this guy doing?” as Detective McIvor approaches him on his left-hand side. The video indicates that § 87(2)(b) approached Detective McIvor without making any sudden movements and that Detective McIvor initiated physical contact by pushing away § 87(2)(b)’s arm. At this time, Detective McIvor stated, “Don’t put anything in my fucking face or my fucking fist is going to go in yours.” Shortly after this comment is made, § 87(2)(b) is forced backwards by Detective McIvor who says, “Take a fucking walk.” The nature of the force used at this time is unclear but it is apparent from the video that Detective McIvor is nearest to § 87(2)(b). § 87(2)(b) can be heard complaining about his treatment to other officers who tell him to walk away.

Patrol Guide Procedure 203-11 states an officer must only use the minimal amount of force necessary to overcome resistance (Board Review 11). Patrol Guide Procedure 203-09 dictates that an officer must be courteous and respectful when interacting with members of the public (Board Review 12).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Squad: 2

Investigator: _____
Signature Print Date

Squad Leader: _____
 Title/Signature Print Date

Reviewer: _____

Title/Signature Print Date